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AMENDED IN SENATE JUNE 13, 2005

## **Senate Constitutional Amendment**

**No. 3**

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**Introduced by Senators Lowenthal and Ashburn**

**(Principal coauthor: Senator Simitian)**

(Principal coauthor: Assembly Member Richman)

**(Coauthors: Senators Alquist, Kehoe, and Soto)**

(Coauthors: Assembly Members Canciamilla, Leno, Nation, and  
Wolk)

December 6, 2004

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Senate Constitutional Amendment No. 3—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing and adding Article XXI thereof, relating to redistricting.

LEGISLATIVE COUNSEL'S DIGEST

SCA 3, as amended, Lowenthal. Elections: redistricting.

~~Existing provisions of the California Constitution require that each member of the Senate, Assembly, Congress, and the State Board of Equalization be elected from a single-member district.~~

~~This measure would require that each of the 40 Senate districts be divided into 2 Assembly districts.~~

Existing provisions of the California Constitution require the Legislature, in the year following the year in which the federal census is taken at the beginning of each decade, to adjust the boundary lines of the state Senate, Assembly, congressional, and State Board of Equalization districts in accordance with specified standards.

This measure would delete this provision, and would instead create a procedure for the appointment of an independent redistricting commission, composed of 11 members, that would be charged with establishing Senate, Assembly, congressional, and State Board of Equalization districts of equal population across the state, adjusted as necessary to ~~accommodate various~~ *achieve designated goals, as specified.*

This measure would provide that certain records of the redistricting commission are public records *and would require the commission to hold public hearings.*

This measure would grant the California Supreme Court original and exclusive jurisdiction over all challenges to a redistricting plan adopted by the commission, and would authorize an affected elector to file a petition for a writ of mandate or prohibition within 45 days after the commission certified the plan to the Secretary of State. The California Supreme Court would be required to act expeditiously on the petition. If the plan is held to be unconstitutional, this measure would require the court to provide relief as it deems appropriate *to remedy any such violation requirements and to otherwise accomplish the purposes of this measure.*

This measure would, among other things, require the establishment of a pool of ~~50~~ 55 candidates for appointment to the commission, as nominated by a panel of 10 retired *superior court judges or judges* of the Court of Appeal *appointed by the Judicial Council*, would require the selection and appointment of the 11 commission members from this pool ~~according to a specified procedure, by officers of the Senate and Assembly, and by the Fair Political Practices Commission~~, and would provide for the filling of vacancies on the commission.

This measure would require the Governor in 2009, and annually thereafter, to include in the Governor's Budget submitted to the

Legislature an amount of funding sufficient to meet the estimated redistricting expenses, and would require the Legislature to make the necessary appropriation in the annual Budget Bill. It would authorize the commission to contract and to hire staff and consultants, including legal representation, for purposes of this measure. It would provide that *the panelists and* commissioners are eligible for reimbursement of expenses pursuant to law.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*Resolved by the Senate, the Assembly concurring,* That the Legislature of the State of California at its 2005–06 Regular Session commencing on the sixth day of December 2004, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Article XXI thereof is repealed.

Second—That Article XXI is added thereto, to read:

#### ARTICLE XXI

Reapportionment of Senate, Assembly, Congressional, and  
State Board of Equalization Districts

SECTION 1. (a) Each member of the Senate, Assembly, Congress, and the State Board of Equalization shall be elected from a single-member district. ~~The territory of each Senate district established pursuant to this section shall be divided into two Assembly districts.~~

(b) By February 28 of each year ending in the number one, the Independent Redistricting Commission shall be established to provide for the redistricting of Senate, Assembly, congressional, and State Board of Equalization districts. As used in this article, “commission” means the Independent Redistricting Commission.

(c) The commission shall consist of 11 members and all of the following shall apply:

(1) No more than four members of the commission may be members of the same political party.

(2) Of the eight commission members appointed pursuant to subdivisions (b) and (c) of Section 2, ~~no two or more~~ *no more than two* may reside in the same county.

(3) Each commission member shall be a registered California voter who has been continuously registered with the same political party, or has been registered as unaffiliated with a political party, for three or more years immediately preceding appointment.

(4) Each commission member shall commit to applying this article in an honest, independent, and impartial fashion and to upholding public confidence in the integrity of the redistricting process.

(d) (1) Within the three years immediately preceding appointment, ~~a commission member may not have done either of~~ *appointment, neither a commission member, nor a member of his or her immediate family, may have done any of the following:*

(A) Been appointed to, elected to, or have been a candidate for any other public office.

(B) Served as an officer of a political party, ~~a registered lobbyist, or an officer or as an officer, paid staff, or paid consultant~~ of a candidate's campaign committee.

(C) *Been a registered lobbyist or an employee of, or a consultant to, a registered lobbyist.*

(2) Legislative and congressional staff and consultants, persons under a contract with the Legislature, and any person ~~with a financial or family relationship with the Governor, a who~~ *has contributed ten thousand dollars (\$10,000) or more to, has a financial relationship with, or is an immediate family member of, the Governor; a Member of the Legislature, a Member of Congress, or a member of the State Board of Equalization,* are not eligible to serve as members of the commission.

(3) A member of the commission shall be ineligible, during his or her term of office, and for three years thereafter, to hold public office in this State or to register as a lobbyist.

(4) *As used in this subdivision, a member of a person's "immediate family" is one with whom the person has a bona fide relationship established through blood, marriage, or adoption.*

SEC. 2. (a) (1) *The Judicial Council, panelists, Members of the Legislature, and the Fair Political Practices Commission or its successor agency, shall work to ensure that the panelists, pool of candidates, and commissioners, as applicable, are representative of this state's racial, ethnic, cultural, geographic, and gender diversity.*

1 (2) A panel of 10 retired *superior court judges* or judges of the  
2 Court of Appeal, appointed by the Judicial Council, shall  
3 nominate candidates for appointment to the commission. *The*  
4 *Judicial Council shall adopt rules and procedures for appointing*  
5 *qualified panelists and for selecting alternates in the event that a*  
6 *panelist is unable to carry out his or her duties.*

7 ~~(2)~~

8 (3) Of the 10 panelists, 5 shall be registered with each of the  
9 two largest political parties in California based on party  
10 registration.

11 ~~(3)~~

12 (4) Each panelist shall be a registered voter in this State who  
13 has been continuously registered with the same political party for  
14 three or more years immediately preceding his or her  
15 appointment.

16 ~~(4)~~

17 (5) By January 8 of each year ending in the number one, the  
18 panel shall establish a pool of qualified persons who are willing  
19 to serve on the commission, and submit a list of the names of  
20 those persons to the President pro Tempore of the Senate, the  
21 minority floor leader of the Senate, the Speaker of the Assembly,  
22 ~~and the minority floor leader of the Assembly.~~ *the minority floor*  
23 *leader of the Assembly, and the Fair Political Practices*  
24 *Commission or its successor agency.*

25 ~~(5)~~

26 (6) The pool of candidates shall consist of ~~50~~ 55 nominees,  
27 with ~~19~~ 20 nominees from each of the two largest political parties  
28 in California based on party registration, and ~~12~~ 15 who are not  
29 registered with either of the two largest political parties in this  
30 State.

31 ~~(6) The panel shall make every effort to ensure that the pool of~~  
32 ~~candidates is representative of both genders and this State's~~  
33 ~~racial, ethnic, and cultural diversity.~~

34 (b) (1) No later than January 31 of each year ending in the  
35 number one, the President pro Tempore of the Senate, the  
36 minority floor leader of the Senate, the Speaker of the Assembly  
37 and the minority floor leader of the Assembly may each strike  
38 from the pool of candidates up to two ~~candidates who are~~  
39 ~~registered with a political party, other than the political party of~~  
40 ~~that legislative officer or leader, that is one of the two largest~~

~~political parties in California based on party registration. Each candidates. Each legislative officer or leader shall, in the following order, appoint to the commission from the remaining candidates in the pool two candidates who are registered with the same political party as that legislative officer or leader:~~

- ~~(A) The President pro Tempore of the Senate.~~
- ~~(B) The minority floor leader of the Senate.~~
- ~~(C) The Speaker of the Assembly.~~
- ~~(D) The minority floor leader of the Assembly.~~

~~(2) If an appointment to be made under paragraph (1) by any of the legislative officers or leaders is not made and submitted to the Secretary of State by January 31, that appointment is forfeited and shall be filled pursuant to subdivision (d). In the event that there are two or more minority parties within the Assembly or the Senate, the leader of the largest minority party by statewide party registration shall make the appointment.~~

~~(2) The Fair Political Practices Commission, or its successor agency, shall appoint three persons, by random selection from the pool of candidates, who are not registered with either of the two largest political parties in this State, under a public process that is open to disclosure.~~

~~(c) Any vacancy in the eight 11 commission positions described in subdivision (b) that remains as of March 1 of a year ending in the number one shall be filled from the pool of nominees by the panel of retired judges described in subdivision (a). The panel shall strive for political balance and fairness in making that appointment.~~

~~(d) At a meeting called by the Secretary of State, the eight commission members appointed pursuant to subdivisions (b) and (c) shall select by majority vote from the nomination pool three additional members who are not registered with any party already represented on the commission. If the eight members fail to appoint one or more of the three additional members within 15 days of that meeting, the panel of retired judges described in subdivision (a) shall appoint from the nomination pool, for those positions remaining unfilled, the additional members who are not registered with any party already represented on the commission. One of the three additional members appointed pursuant to this subdivision, as selected by majority vote of the eight members~~

1 ~~appointed pursuant to subdivision (b), shall serve as the chair of~~  
2 ~~the commission.~~

3 *(d) The 11 members of the commission shall select one of the*  
4 *three members appointed pursuant to paragraph (2) of*  
5 *subdivision (b) to serve as the chair of the commission.*

6 ~~(e) The 11 members of the commission shall select by~~  
7 ~~majority vote one of their members to serve as the vice chair.~~

8 ~~(f)~~

9 *(e) The term of office of each member of the commission*  
10 *expires upon the appointment of the first member of the*  
11 *succeeding commission.*

12 SEC. 3. (a) After having been served written notice and  
13 provided with an opportunity for a response, a member of the  
14 commission may be removed by the Governor, with the  
15 concurrence of two-thirds of the Senate, for substantial neglect of  
16 duty, gross misconduct in office, or inability to discharge the  
17 duties of office.

18 (b) (1) If a member of the commission vacates his or her  
19 office or is removed pursuant to subdivision (a) prior to the  
20 completion of his or her term for any reason, the panel of retired  
21 ~~judges described in Section 2 shall nominate a pool of three~~  
22 ~~candidates~~ *judges described in subdivision (a) of Section 2 shall*  
23 *fill the vacancy from the pool of nominees selected pursuant to*  
24 *that subdivision within the first 30 days after the vacancy occurs.*

25 (2) ~~The nominees~~ *nominee chosen* shall be of the same  
26 political party membership, or nonpartisan status, as the case may  
27 be, held by the vacating member at the time of his or her  
28 appointment. *The panel shall work to ensure diversity and*  
29 *fairness in filling that vacancy. If the vacating member was the*  
30 *chair of the commission, the commission shall select a new chair.*  
31 ~~appointment of the successor member shall be made from the~~  
32 ~~pool of nominees by the person, persons, or entity that, pursuant~~  
33 ~~to subdivision (b), (c), or (d) of Section 2, appointed the member~~  
34 ~~vacating the office, except that a successor appointed pursuant to~~  
35 ~~subdivision (d) of Section 2 under these circumstances is not~~  
36 ~~thereby made the chair of the commission and, in the event of~~  
37 ~~that appointment, a new chair shall be selected by a majority vote~~  
38 ~~of the remaining members.~~

39 (3) ~~If the appointment of a replacement member is not made~~  
40 ~~within 14 days following the presentation of the nominees, the~~

~~panel described in Section 2 shall make the appointment, striving for political balance and fairness. The newly appointed member~~  
*The newly appointed member* shall serve out the remainder of the original term of the vacating member.

SEC. 4. (a) The activities of the commission are subject to all of the following:

(1) Six members of the commission, one of whom may be the chair or vice chair, shall constitute a quorum.

(2) Six or more affirmative votes shall be required for any official action.

(3) The commission shall comply with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code), or its successor. The commission shall provide not less than 14 days' public notice for each meeting.

(4) The records of the commission pertaining to redistricting, and all data considered by the commission, are public records, open to inspection by members of the public upon request, except that the commission may withhold from public inspection preliminary drafts, notes, and communications between commission members, *staff*, and *consultants*.

(5) Any written or verbal communication with any commission member outside of a public hearing, other than by staff or by legal counsel, is prohibited as to any matter on which the commission is required to meet pursuant to paragraph (3). This paragraph does not prohibit any communication between commission members that is otherwise permitted by the Bagley-Keene Open Meeting Act or its successor.

(b) The duties of the commission include all of the following:

(1) To establish Senate, Assembly, congressional, and State Board of Equalization districts based on a mapping process for ~~each district that shall consist initially of the creation of districts of equal population across the State; each district in accordance with the goals specified in paragraph (2).~~

(2) To ~~adjust the districts established~~ *establish districts* pursuant to paragraph (1) as necessary to ~~accommodate~~ *achieve* each of the following goals, prioritized according to the following order:

(A) ~~Districts shall comply with the United States Constitution.~~



1 (A) *Congressional districts shall each have equal population*  
2 *with other districts for the same office in compliance with the*  
3 *United States Constitution.*

4 Senate, Assembly, ~~congressional~~, and State Board of  
5 Equalization districts shall each have equal population with other  
6 districts for the same office, to the extent practicable, *in*  
7 *compliance with the United States Constitution.*

8 (B) Districts shall comply with the federal Voting Rights Act  
9 of 1965 (42 U.S.C. Sec. 1971 and following).

10 (C) Districts shall be geographically contiguous to the extent  
11 practicable.

12 (D) District boundaries shall respect communities of interest to  
13 the extent practicable.

14 (E) To the extent practicable, district lines shall use visible  
15 ~~geographic features, city and county boundaries, and undivided~~  
16 ~~census tracts.~~ *geographic features and city and county*  
17 *boundaries.*

18 (F) Districts shall be geographically compact to the extent  
19 practicable.

20 ~~(3)~~

21 (c) Party registration and voting history data shall be excluded  
22 from the mapping process described in paragraphs (1) and (2),  
23 but may be used to test maps for compliance with this  
24 subdivision. The places of residence of incumbents or candidates  
25 may not be identified or considered in the creation of a map  
26 pursuant to paragraphs (1) and (2), but maybe considered in  
27 establishing the boundaries of final maps pursuant to ~~paragraph~~  
28 ~~(5)~~ *subdivision (e).*

29 ~~(4) The~~

30 (d) (1) *The commission shall establish and implement an open*  
31 *and noticed hearing process for public input and deliberation.*  
32 *The hearing process shall include at least the following three*  
33 *stages: (A) one or more hearings to receive public input before*  
34 *the commission draws any maps; (B) one or more hearings*  
35 *following the initial drawing and display of commission maps;*  
36 *and (C) one or more hearings following the drawing and display*  
37 *of the final maps.*

38 (2) *The commission shall propose and implement a plan to*  
39 *provide the public access to the United States census data and to*  
40 *make software available to the public for drawing maps and*

1 *providing input through the hearing process. At the first two*  
2 *stages, the commission shall display ~~a the map~~ the maps created*  
3 *pursuant to paragraphs (1) and (2) of subdivision (b) of Senate,*  
4 *Assembly, congressional, and State Board of Equalization*  
5 *districts to the public for comment, in a manner designed to*  
6 *achieve the widest public dissemination reasonably possible, and*  
7 *public comment shall be taken for at least 30 days from the date*  
8 *of public display. Either the Senate or the Assembly, or both,*  
9 *may act within this period to make recommendations to the*  
10 *commission by majority or by minority report, which*  
11 *recommendations shall be considered by the commission.*

12 ~~(5)~~

13 *(e) The commission shall, after consideration of public*  
14 *comments and recommendations made by the Senate or*  
15 *Assembly pursuant to ~~paragraph (4)~~ subdivision (d), and having*  
16 *made every effort to draw the proposed maps in compliance with*  
17 *the criteria listed in paragraphs (1) and (2) of subdivision (b),*  
18 *establish the boundaries of the final maps for Senate, Assembly,*  
19 *congressional, and State Board of Equalization districts, and shall*  
20 *certify those districts to the Secretary of State. The approval of*  
21 *the final boundaries shall be by majority vote of the membership*  
22 *of the commission, and requires that one or more votes for*  
23 *approval be cast by members of the commission registered with*  
24 *each of the two largest political parties in California based on*  
25 *party registration, and that one or more votes for approval be cast*  
26 *by members of the commission not registered with either of these*  
27 *two political parties.*

28 *(f) The commission shall issue, with its final plan, a report that*  
29 *explains the basis on which the commission made its decisions in*  
30 *achieving compliance with the goals listed in paragraph (2) of*  
31 *subdivision (b), particularly where compliance with one goal*  
32 *resulted in less than full compliance with another. The report*  
33 *shall define or describe, as applicable, the terms and standards*  
34 *used in drawing the maps.*

35 SEC. 5. (a) In 2009, and annually thereafter, the Governor  
36 shall include in the Governor's Budget submitted to the  
37 Legislature pursuant to Section 12 of Article IV an amount of  
38 funding sufficient to meet the estimated expenses of the  
39 subsequent redistricting process occurring pursuant to this article,  
40 and shall make adequate office space available for the operation

1 of the *panel and* commission. The Legislature shall make the  
2 necessary appropriation in the annual budget bill.

3 (b) The *panel and* commission, with fiscal oversight from the  
4 Department of Finance or its successor, shall have procurement  
5 and contracting authority and may hire staff and consultants,  
6 exempt from the civil service, for the purposes of this article,  
7 including legal representation.

8 (c) The commission has standing in legal actions regarding a  
9 redistricting plan and to establish whether funds or other  
10 resources provided for the operation of the commission are  
11 adequate. The commission has sole authority to determine  
12 whether the Attorney General or legal counsel hired or selected  
13 by the commission shall represent the people of California in the  
14 legal defense of a redistricting plan.

15 (d) *The commission shall establish criteria for the hiring and*  
16 *removal of staff and consultants. The commission may apply the*  
17 *provisions of subdivision (d) of Section 1 to the hiring of staff*  
18 *and consultants to the extent practicable.*

19 (d)

20 (e) (1) The California Supreme Court has original and  
21 exclusive jurisdiction in all proceedings in which a redistricting  
22 plan adopted by the commission is challenged.

23 (2) To challenge a redistricting plan, any affected elector may  
24 file a petition for a writ of mandate or writ of prohibition, within  
25 45 days after the commission has certified the plan to the  
26 Secretary of State, to bar the Secretary of State from  
27 implementing the plan on the grounds that the filed plan violates  
28 this Constitution, the United States Constitution, or any federal  
29 statute.

30 (3) The court shall act expeditiously on the petition. If the  
31 court determines that a redistricting plan adopted by the  
32 commission violates this Constitution, the United States  
33 Constitution, or any federal statute, the court shall fashion the  
34 relief that it deems appropriate *to remedy any such violation and*  
35 *otherwise accomplish the purposes of this article.*

36 SEC. 6. (a) Members of the *panel and the* commission are  
37 eligible for reimbursement of personal expenses incurred in  
38 connection with the duties performed ~~for the commission~~  
39 ~~pursuant to law, and a~~ *pursuant to this article.* A member's

1 residence is deemed to be the member's post of duty for purposes  
2 of reimbursement of expenses.

3 (b) The commission may not meet or incur expenses after the  
4 redistricting plan becomes final pursuant to ~~paragraph (5) of~~  
5 ~~subdivision (b)~~ *subdivision (e)* of Section 4, except with respect  
6 to any pending litigation or government approval concerning the  
7 plan, to revise districts if required by court order, or if the  
8 number of Senate, Assembly, congressional, or State Board of  
9 Equalization districts is changed.

10 (c) For purposes of this article, "day" means a calendar day,  
11 except that if the final day of a period within which an act is to be  
12 performed is a Saturday, Sunday, or holiday, the period is  
13 extended to the next day that is not a Saturday, Sunday, or  
14 holiday.

15 (d) This article is self-executing.